IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

FRIDAY, THE 17TH AUGUST 2007 / 26TH SRAVANA 1929

Crl.MC.No. 2621 of 2007()

CMP.1521/2006 of JUDL.MAGISTRATE OF FIRST CLASS, PARAVUR
[CRIME NO.17/1993 OF BINANIPURAM POLICE STATION]

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PETITIONER/ACCUSED:

M.V.PAPPACHAN,AGED 70 YEARS,
S/O. VAREED,AMBATTU VEEDU,
CONVENT RPAD, NORTH PARAVUR.

BY ADV. SRI.S.RAJEEV

RESPONDENTS: STATE

STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM (CRIME NO. 17 OF 1993 OF
BINANIPURAM POLICE STATION)

BY PUBLIC PROSECUTOR SRI.M.S.BREEZ

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 17/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

Crl.M.C.No.2621 of 2007

Dated this the 17th day of August 2007

O R D E R

The petitioner is aggrieved by Annexure 1 order passed by the learned Magistrate in an application filed by him under Sections 451 and 457 Cr.P.C. The case has had a chequered career by now. The crime has been registered on the allegation that the de facto complainant's gold chain had been thieved. Investigation proceeded. The accused was arrested. On the basis of the alleged confession statement of the accused, the thieved gold ornament was allegedly recovered from the possession of the petitioner herein. It is the case of the prosecution that the accused had sold the thieved ornament to the petitioner and had confessed to the police of such sale of the stolen gold ornament to the petitioner. Under Section 27 of the Evidence Act, it was allegedly recovered from the possession of the petitioner. Investigation is complete. Final report has already been filed. Case bas been taken on file as C.C.No.35/99. The accused is not available for arrest so far. The case is hence continuing to be pending before the learned Magistrate.

2. The petitioner has a case that he had not received the gold ornament concerned from the accused. According to him, he was compelled under duress to hand over his own gold ornament to the police. He has promptly raised his grievance before appropriate

authorities in respect of that. The petitioner's application for release of the ornament has not been considered favourably by the learned Magistrate. Earlier applications were dismissed. Finally, by the impugned order (copy of which is produced as Annexure 1), the application has been dismissed. The dismissal is mainly on the ground that the trial is not complete.

3. The learned counsel for the petitioner submits that the course adopted by the learned Magistrate is incorrect. It ignores the realities of the situation. The gold ornament was seized much earlier and the case was registered after the filing of the final report in 1999. Even in 2007, the accused is not available for trial. It is unnecessary to direct that the gold ornament be kept in the custody of the court indefinitely. The learned Magistrate must have considered the claim on merits and passed appropriate orders. According to the petitioner, the petitioner is the person most entitled to keep possession of the gold ornament pending trial. The learned counsel submits that the petitioner is willing to undertake and shall keep the gold ornament without alienation or alteration in his custody until such time that the court passes final order in the matter.

4. I am certainly inclined to agree with the contention of the learned counsel for the petitioner that his application for release must have been disposed of on merits. But I find from the impugned order,

that notice was not given to the de facto complainant or to the accused and in these circumstances, I am of the opinion that the interests of justice will be best served by making an observation that the petitioner shall be at liberty to file a fresh application before the learned Magistrate for release of the gold ornament to him subject to appropriate conditions. He shall array the accused and the de facto complainant also as parties to the petition. Attempt shall be made to give notice to them. If the accused is absconding and notice cannot be served on him, the learned Magistrate must proceed to pass appropriate orders without waiting for service of notice on the accused. Appropriate orders on merits shall be passed, certainly bearing in mind the dictum in Sunderbhai Ambalal Desai v. State of Gujarat [SC 2003(2) KLT 1089].

5. Needless to say, the mere fact that the trial is not over shall not be reckoned as a sufficient reason not to pass orders under Section 451 Cr.P.C on merits. Needless further to say that the learned Magistrate must dispose of such application expeditiously.

6. This petition is allowed in part and the above directions are issued.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007